

IN THE UNITED STATES DISTRICT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION

**FILED**

SEP 2 1999

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ALABAMA

ADELFA GARCIA, et al., )

Plaintiffs, )

vs. )

HARDEN MANUFACTURING  
CORPORATION, et al., )

Defendants. )

CIVIL ACTION NUMBER

97-C-1401-S

**ENTERED** *AWB*

SEP 02 1999

**MEMORANDUM OPINION GRANTING ATTORNEY'S FEES**

Plaintiffs have prevailed on several of their claims in this case. Their counsel seek an award of attorney's fees in the amount of \$122,550. Defendants insists that Plaintiffs are entitled to no more than \$33,600. Based on the opinion which follows, the Court concludes that Defendants' position comes closer to the mark than that of Plaintiffs.

I

Plaintiffs Adelfa Garcia-Villa and Conception Villa, Mexican nationals, were employed by Defendant Harden Manufacturing Corporation at its facility in Cullman, Alabama. They do not speak English. They filed this action on June 9, 1997, against the company and their supervisor, Levon Swims. They claim that Defendants (1) violated the

Family and Medical Leave Act (“FMLA”), 29 U.S.C. § 2601 *et seq.*; (2) violated the Americans with Disabilities Act (“ADA”), 42 U.S.C. § 12101 *et seq.*, (3) violated the Pregnancy Discrimination Act, P.L. 95-555, 42 U.S.C. § 2000e(k), *et seq.*, (4) discharged them because of their national origin in violation of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.* (“Title VII”); (5) violated the Occupational Safety and Health Act, 29 U.S.C. § 651, *et seq.* (“OSHA”); (6) violated the Comprehensive Omnibus Budget Reconciliation Act of 1986 (“COBRA”), § 1 *et seq.*, 100 Stat. 82; (7) breached their contracts of employment; and (8) committed forgery. (Pretrial Order at 2-6.) All of the claims were dismissed against the individual defendant; a jury found for Plaintiffs on their FMLA claim; and the Court found for Plaintiffs on their COBRA claims.

Counsel for Plaintiffs incurred \$2,786.80 in out-of-pocket expenses.

In the Court’s judgment roughly half (50%) of the legal services performed in this case would have been required to successfully prosecute the FMLA and COBRA claims.

The Plaintiffs’ counsel indubitably failed to maintain contemporaneous time records. In her initial submission to the Court, with respect to hours, Plaintiffs’ counsel simply stated: “The totality of hours worked in this case is 982 hours, of which at least 80% of the time involved the FMLA and COBRA issues, that is 785 hours. **785 hours @ 150 =117,750.**” (Pl.’s Costs and Att’ys Fees, Document (“D”) at 87.) Court File. When


Defendant objected to the obvious failure to itemize and document the claimed hours, Plaintiffs' counsel responded with a document entitled, "Plaintiffs' Attorney's Fees - Time Sheet." (D at 101.) Under the heading, "Concept," counsel describes the various services performed; and under the heading "Time," she reconstructs/estimates the time required to perform the various services.

Defendant disputes Plaintiffs' reconstructed hours, asserting that under the most generous view, Plaintiffs' counsel could not have reasonably expended more than 224 hours in the case. (Def.'s Resp. Pl.'s Fee Pet. at 7.)

The Court has carefully reviewed the fee submission (D 101, D 116), deleting hours which it found (a) to be excessive, (b) to have required only clerical skills and (c) lacked sufficient documentation. Based on that review, attached to this opinion, the Court concludes that 419.5 hours were reasonably expended in the prosecution of the case. Deducting half of that time for the unsuccessful claims, Plaintiffs are entitled to a fee of \$31,462.50 [ $\$150.00 \times 209.75$  hours].

By separate order, Plaintiffs' counsel will be awarded a fee of \$31,462.50 and reimbursed for her expenses.

DONE this 24 day of September, 1999.

  
UNITED STATES DISTRICT JUDGE  
U. W. CLEMON

## ATTACHMENT TO MEMORANDUM

<u>Service Performed</u>	<u>Hours Claimed</u>	<u>Hours Allowed</u>	<u>Difference</u>	<u>Reason<sup>1</sup></u>
First Conference with Villa	3	3		
Second Conference with Garcia and Villa	4	4		
Third Conference with Garcia and Villa	4	4		
Contacting medical experts	2.50	2.50		
Factual Investigations - trips Russellville/Haleyville	22	8	14	I
Fourth Conference with clients and potential witnesses	12	12		
Pre-complaint filing - legal research at law library	28	8	(20)	E
Drafting complaint, checking contents with clients, proof reading	23	12	(11)	E
Filing complaint - courthouse	.50	.50		
Defendants' Answer-reading, analysis, make notes, file	1	1		
Motion to dismiss Villa's claims reading, analysis, make notes, file	2	.50	(1.50)	E
Motion to dismiss Garcia's claims reading, analysis, make notes, file	1	.50	.50	E

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<sup>1</sup>E = Excessive Time; C = Work required only clerical skills; I = insufficient documentation; D=Duplicate time for which credit has otherwise been given.

<u>Service Performed</u>	<u>Hours Claimed</u>	<u>Hours Allowed</u>	<u>Difference</u>	<u>Reason</u>
Writings 7-14-97	2	0	(2)	I
Writings 7-15-97	1	0	(1)	I
Conference with EEOC, round trip, waiting, conference	3	3		
Letter from defendants 7-30-97, analysis, make notes, file	.25	.25		
Legal research answer Motion Dismiss Villa & Garcia - law library	22	8	(16)	E
Plaintiffs' response to Motion to dismiss Villa & Garcia claims	19	8	(11)	E
Court filing, courthouse	.50	0	(.5)	C
Letter from Defendants, 8-14-97, analysis, make notes, filing	.25	.25		
Attorneys initial conference, walking trip plus conference	2	2		
Filing reports of parties, courthouse	.50	0	(.5)	C
To send report to Bradley	.25	0	(.5)	C
To send report to Lowe	.25	0	(.5)	C
Scheduling Order - analysis, notes on calendar, file	1	.25	.75	E
Plaintiffs' initial disclosures, gather information and draft	6	1	(5)	E

<u>Service Performed</u>	<u>Hours Claimed</u>	<u>Hours Allowed</u>	<u>Difference</u>	<u>Reason</u>
Notice subpoena records from Defendants, read, notes, file	.25	.25		
Defendants initial dis- closures, read, make notes and file	.25	.25		
Request production for Villa, read, make notes and file	.25	.25		
Request production for Garcia, read, make notes and file	.25	.25		
Request Interrogatories Villa, read, make notes and file	1	1		
Request Interrogatories Garcia, read, make notes and file	1	1		
Responses and objections to request production Garcia	4	2	(2)	E
Responses and objections to request production Villa	4	2	(2)	E
Responses and objections interrogatories Garcia	4.25	2	(2.25)	E
Responses and objections interrogatories Villa	4.25	2	(2.25)	E

<u>Service Performed</u>	<u>Hours Claimed</u>	<u>Hours Allowed</u>	<u>Difference</u>	<u>Reason</u>
Request for production from Defendants, file study and draft request	9	4	(5)	E
Two letters from Defendants 11-11-97; objections answers, notes	2	1	1	E
Amended answer by defendants, read, make notes, file	1	1		
Letter to Defendants 2 pages 11-18-99	2	.25	(1.75)	E
Letter to Defendants 11-25-99	.25	.25		
Defendant responses to Plaintiff production documents, Villa-analysis, make notes, file	2	1	(1)	E
Defendant response to Plaintiff's production documents, Garcia-analysis, make notes, file	2	1	(1)	E
Updating production by Plaintiffs to Defendants	.25	.25		
Notice deposition Garcia, read, make notes, filing	.25	.25		
Notice deposition Villa, read, make notes, filing	.25	.25		

<u>Service Performed</u>	<u>Hours Claimed</u>	<u>Hours Allowed</u>	<u>Difference</u>	<u>Reason</u>
Several arrangements with clients for taking their depositions	2	2		
Notice deposition Levon Swims	.50	.50		
Notice deposition Ron Trousdale	.50	.50		
Writings to Defendant 12-23-97	2.50	1.50	(1)	E
Letter 12-21-97, read, make notes, file	.25	.25		
Writing to Lowe 1-7-98	1.50	1.50		
Notice subpoena records, Garcia Jan-98, read, make notes, file	.25	.25		
Notice subpoena records, Villa Jan-98, read, make notes, file	.25	.25		
Plaintiffs' Motion to quash subpoena records to the INS	6	6		
Legal research motion to quash, law library	10	0	(10)	D
Defendants' opposition motion to quash, analysis, notes	1.25	0	(1.25)	D
Defendants' oral argument request, read, notes, filing	.25	.25		



<u>Service Performed</u>	<u>Hours Claimed</u>	<u>Hours Allowed</u>	<u>Difference</u>	<u>Reason</u>
New notices of depositions and letter	.25	.25		
Notify and make arrangements with clients for depositions	1.50	1.50		
Defendants' motion to reconsider order court granting motion to quash, notes	1.25	.25	(1)	E
Letter to defendants 1-23-98, deposition rescheduled	.50	.25	(.25)	E
Subpoena & notice subpoena deposition Trousdale	1.50	.50	(1)	E
Plaintiffs' response to Def. Mot. Reconsider Order to Quash	5	1	(4)	E
Legal research for Def Mot. Reconsider Order quash, law library	8	2	(6)	E
Filing in Court response Def. Mot reconsider order quash	.50	0	(.5)	C
Court Hearing Motion - Mot. Reconsider Order quash	4	2	(2)	E
Writing to defendants, mailing, filing 2-13-98	.50	.50		

<u>Service Performed</u>	<u>Hours Claimed</u>	<u>Hours Allowed</u>	<u>Difference</u>	<u>Reason</u>
Letter from defendants 2-23-98, read, notes	.25	.25		
Letter from defendants 2-24-98, read, check dates, notes	.25	.25		
Letter/fax to defendants 3-25-98	1	.50	(.5)	E
Letter/fax to defendants 3-27-98	.50	.50		
Letter to Dr. Byrne 3-31-98	1.25	.50	(.75)	E
Notices deposition Garcia, read, notes, file	.25	.25		
Notice deposition Villa, read, make notes, file	.25	.25		
Third notice & subpoena taking deposition Trousdale	1.50	.25	(1.25)	E
Third notice deposition Swims	.25	.25		
Letter 4-21-98 about Trousdale, refusing deposi- tion, read, make notes, file	.25	.25		
Plaintiffs' Motion compel- ling depos. Trousdale	8	1	(7)	E
Filing motion compelling, courthouse	1	0	(1)	C

<u>Service Performed</u>	<u>Hours Claimed</u>	<u>Hours Allowed</u>	<u>Difference</u>	<u>Reason</u>
Letter 5-13-98, read, notes, file	.25	.25		
Subpoena records Golden Poultry, read, make notes, file	.25	.25		
Motion by defendants to continue discovery, read, notes, file	.25	.25		
Information client	.50	0	(.50)	I
Notice deposition Dr. Santiago, read, make notes, filing	.25	.25		
Plaintiffs' Motion to deny the taking of 2 <sup>nd</sup> deposition of Garcia	5	1	(4)	E
Filing motion to deny taking depositions, courthouse	1	0	(1)	C
Note to defendants 6-5-98	.25	.25		
Response from Defendant to motion to deny, analysis, make notes, file	1.50	1.50		
Request of defendants allow deposition Dr. Byrne after time, make notes	.25	.25		

<u>Service Performed</u>	<u>Hours Claimed</u>	<u>Hours Allowed</u>	<u>Difference</u>	<u>Reason</u>
Defendants' letter to Dr. Santiago 6-15-98, read, make notes, file	.25	.25		
Defendants' motion to transfer venue to Jasper, analysis, make notes	.25	.25		
Answer to defendants' motion to transfer venue	6.5	6.5		
Legal research, change of venue, at law library	5	0	(5)	E
Filing answer to motion, courthouse	.50	0	(.50)	C
Court hearing motion to transfer venue	4	2	(2)	E
Defendant's motion for summary judgment, read, analysis, make notes, file	8	8		
Defendants' memorandum, analysis, make notes, file	3	0	(3)	E
Analysis, tabulating, making notes for deposition Garcia, separation by subjects as related to the counts in defendants' motion for summary judgment	8	5	(3)	E

<u>Service Performed</u>	<u>Hours Claimed</u>	<u>Hours Allowed</u>	<u>Difference</u>	<u>Reason</u>
Analysis, tabulating, making notes deposition Villa, separation by subjects as related to the counts in defendants' motion for summary judgment	9	6	(3)	E
Analysis, tabulating, making notes, deposition Dr. Santiago, separating by subject matter as related to counts in def. Motion for summary judgment	3	0	(3)	E
Analysis, tabulating, making Notes for deposition Ron Trousdale, separating by subject matter as related to counts in Defendants' motion for summary judgment	10	6	(4)	E
Response by plaintiffs motion summary judgment, transcription of passages from different 4 depositions, memorandum law, 49 pages plus plaintiffs' motion summary judgment	64	16	(48)	E
Filing at courthouse	.50	0	(.5)	C
Legal research on subjects motion summary judgment	24	10	(14)	E

<u>Service Performed</u>	<u>Hours Claimed</u>	<u>Hours Allowed</u>	<u>Difference</u>	<u>Reason</u>
Defendants' supplement motion reconsider, analysis, make notes, file	1.50	.50	(1)	E
Court hearing motion partial summary judgment	4	1.5	(2.5)	E
Def. Motion to reconsider order granting PL. motion quash, analysis, notes	1	.50	(.5)	E
Legal research motions	8	4	(4)	E
Def. Mot to supplement order granting PL. motion quash, analysis, notes	1.25	.25	(1)	E
Plaintiffs answers to Def. Motion to reconsider	12	4	(8)	E
Trip to Atlanta (no time to mail an amicus curia) INS records subpoenaed	9	9		
Plaintiffs' supplement to answer def. Supplement and mot to reconsider - order to subpoena INS records	1.25	1.25		
Filing courthouse	.50	0	(.50)	C
Pretrial order draft from defendant, analyze, make notes, file	1.25	1.25		
Fax to defendants 11-13-98	.25	.25		

<u>Service Performed</u>	<u>Hours Claimed</u>	<u>Hours Allowed</u>	<u>Difference</u>	<u>Reason</u>
Writing to defendants 11-16-98	1	.25	(.75)	E
Letter from def. 11-13-98, analyze, make notes, file	.25	.25		
Preparation plaintiffs position, pretrial order	9.50	5	(4)	E
Final pretrial order analysis, make notes	1	1		
Notice appearance, D. Simmons, make notes, file	.25	.25		
Defendants' motion to modify pretrial order, analysis, make notes	1	.50	(.5)	E
Plaintiffs' response to defendants motion to modify pretrial order	2.50	1	(1.5)	E
Joint motion to amend pretrial order	.25	.25		
Plaintiffs list of witnesses and list of exhibits	2	2		
Plaintiffs' legal research to prepare list of damages	9	1	(8)	E
Plaintiffs' calculations on damages report on damages presentation	8	1	(7)	E
Def. Motion clarify pretrial order, analysis, make notes, file	1.50	.25	(1.25)	E

<u>Service Performed</u>	<u>Hours Claimed</u>	<u>Hours Allowed</u>	<u>Difference</u>	<u>Reason</u>
Letter 1-20-99, read, make notes, file	.25	.25		
Analysis and make notes compare defendants' exhibit list	3.5	3.5		
Analysis and questions to plaintiffs on defendants witness list	1.5	1.5		
Letter Def. 1-22-99, read, make notes, file	.25	.25		
Plaintiffs' responses to defendants' Motion to modify pretrial order Exhibits and deposition research to to take sections related to the issue	6	4	(2)	E
Plaintiffs' responses defendants motion to clarify pretrial order and exhibits	5	3	(2)	E
Motion to amend plaintiffs' List trial exhibits	1	1		
Filing courthouse	.50	0	(.50)	C
Letter to defendants 1-29-99, requesting list exhibits not produced	1.50	.50	(1)	E
Def, objections plf's list of exhibits, analysis, make notes for answering it	1	1		



<u>Service Performed</u>	<u>Hours Claimed</u>	<u>Hours Allowed</u>	<u>Difference</u>	<u>Reason</u>
Plaintiffs' objections to defendants list of exhibits	3.5	3.5		
Response to defendants objections to plaintiffs' list of exhibits - checked every exhibit objected	6	6		
Letter from defendants, 2-4-99, read defendants' health care plan- Make notes for future trial preparation	2.5	2.5		
Plaintiffs' motion to take deposition of Dr Byrne	1.5	.50	(1.0)	E
Filing at courthouse	.50	0	(.5)	C
Several telephone calls from and to: Janet Murchison, Carmen Hamilton, Ms. Simpson (to obtain ct. reporter in Huntsville), video deposition arrangements	4	4		
Several calls from Dr. Santiago and his staff	.50	.50		
Several calls from Dr. Greenberg	.50	.50		
Preparation deposition Villa	3	3		
Deposition Villa	5	5		

<u>Service Performed</u>	<u>Hours Claimed</u>	<u>Hours Allowed</u>	<u>Difference</u>	<u>Reason</u>
Preparation for first deposition 1 Garcia	4	4		
Deposition 1 Garcia	5	5		
Preparation for second deposition Garcia	3	3		
Deposition II of Garcia in Haleyville	8	8		
Preparation deposition Dr. Santiago	1.5	1.5		
Deposition of Dr. Santiago in Russellville	3	3		
Preparation for deposition Trousdale, 10 pages of written questions	10	8	(2)	E
Deposition of Trousdale	5	5		
Preparation deposition Dr. Byrne	4	4		
Deposition Dr. Byrne	5	5		
Interpreters - calls to find one available - interpreter preparation	2	2		
In re. Interpreter Calvo, offered by defendants, read letter, resume, check	.50	.50		
Call to def. To cancel trial subpoena for Trousdale	.25	.25		

<u>Service Performed</u>	<u>Hours Claimed</u>	<u>Hours Allowed</u>	<u>Difference</u>	<u>Reason</u>
Letter Def. 2-19-99 re Trousdale	.25	.25		
Fax to Def. Re cancellation of interpreter	.25	.25		
Pretrial preparation of materials, files, labeling exhibits, etc.	34	16	(18)	E
Preparation of plaintiffs for trial	10	4	(6)	E
Preparation trial witnesses	8	8		
Subpoena of trial witnesses, prepared and mailed 11 subpoenas and letters	9	9		
Mediation preparation and deliver of materials to media- tor	6	6		
Mediation conference	6	6		
Second preparation of plaintiff	8	4	(4)	E
Trial 2-22-99, lasted 2.5 days	22	22		
Review of materials argued first day of trial and prepare for next day	3.50	0	(3.5)	D
Review materials argued second day of trial	3.50	0	(3.5)	D

<u>Service Performed</u>	<u>Hours Claimed</u>	<u>Hours Allowed</u>	<u>Difference</u>	<u>Reason</u>
Attorney for plaintiffs has maintained an average of 2 hours per week - during 2 years in conversations with clients and interpretation/translation of the materials subject to the case (104 weeks x 2 hours average	208	0	(208)	I,D
Various conversations during the 2 years with attorneys for defendants: St. Clair, Estes, Simmons and Lowe	9	0	(9)	I,D
Miscellaneous during two years including post office trips	10	0	(10)	I,D
Write 4 letters for witnesses'- Employers	1.5	.50	(1)	E
Analysis defendants' jury instructions (33 pages), Objections notes	3.5	0	(3.5)	D
Second set defendants' jury instructions, analysis, objections, notes	1.5	0	(1.5)	D
Supplement jury instructions by defendants, analysis, objection notes	1	0	(1)	D
Voir dire questions by defendants, analysis, notes for objections	.5	0	(.5)	D

<u>Service Performed</u>	<u>Hours Claimed</u>	<u>Hours Allowed</u>	<u>Difference</u>	<u>Reason</u>
First defendants' motion in limine, reading, analysis, notes for Objection	.5	0	(.5)	D
Response by plaintiffs motion in limine	3	0	(3)	D
Amendment of plaintiffs' list of exhibits	.5	0	(.5)	D
Plaintiffs' voir dire	1.5	0	(1.5)	D
Plaintiffs motion in limine	1.5	0	(1.5)	D
Legal research to prepare plaintiffs proposed jury charges (20 pages)	12.5	0	(12.5)	D
Plaintiffs' proposed jury charges preparation and drafting	10	10		
Third motion in limine by Defendants, analysis	.25	0	(.25)	D
Objection notice def. For pltf fees and costs	.25	0	(.25)	D
Fax from def 3-10-99 and letter from def. Recf 3-12-99	.25	.25		
Defendant's response pltf fee petition, analysis, make notes, file	.50	.50		
Subpoena records Accts. Receivable Lowe, Moble, Lowe	.25	.25		

<u>Service Performed</u>	<u>Hours Claimed</u>	<u>Hours Allowed</u>	<u>Difference</u>	<u>Reason</u>
Notice to def. Subpoena records Lowe, Mobley, Lowe	.25	.25		
Subpoena records Accts. Receivable Bradley, Arant	.25	.25		
Notice subpoena to def. records Bradley, Arant	.25	.25		
Plaintiff's motion for a court order for the production of billing records	3	2	(1)	E
To obtain the affidavit of atty. Reilly and reviewing of records	3	2	(1)	E
Motion to strike affidavit of Arendall	1	1		
Filing motion courthouse	1	1		
To Obtain affidavit of attorney Brown and Reviewing records	2.5	1	(1.5)	E
Response - Memorandum in support attorney's fees	2.5	2.5		
Legal research in support of attorney's fees	3	2	(1)	E
Filing at courthouse	.5	0	(.5)	C
Def. Motion quash, Bradley	.25	.25		
Def. Motion quash, Lowe	.25	.25		

<u>Service Performed</u>	<u>Hours Claimed</u>	<u>Hours Allowed</u>	<u>Difference</u>	<u>Reason</u>
Def. Response pltfs attorney's fees	.25	.25		
Def 4 affidavits (Estes, St. Clair, Simmons, Lowe)	.50	.50		
Read make notes, defendants' Response production	.25	.25		
Def. Evidentiary submission, read file	.25	.25		
Plaintiffs' Supplement to Motion to Strike Affid. A. Arendall	1.50	.50	(1)	E
Filing Courthouse	.50	0	(.50)	C
Def. Writing certification hours, read, file	.25	0	(.25)	C
Def. Supplemental response, read, make notes, file	.50	.50		
Plaintiffs' Response to Def. Supplemental brief	6.25	2	(4.25)	E
Filing Courthouse	.50	0	(.50)	C
Motion hearing 4-22-99	2	2		
Totals	<u>1.000</u>	<u>419.5</u>	<u>580.5</u>	